

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Sections 50.00, 50.01, 50.02, and 50.03 to Article 1, add Sections 51.00, 51.01, 51.02, 51.04, and 51.05 to Article 2 of Chapter 5.5, Subdivision 1 of Division 1, Title 14, California Code of Regulations (CCR), and add Sections 155.01, 155.05, and 155.10 to Title 14, CCR Amend Section 109, Title 14, CCR, and Make Inoperative Fish and Game Code Sections 8383 and 8383.5.  
Re: Fishery Management Plans (FMP) Generally,  
White Seabass Fishery Management Plan (Plan),  
Adoption of White Seabass Commercial Laws as Regulations.

- I. Date of Initial Statement of Reasons: April 20, 2001
- II. Date of Pre-adoption Statement of Reasons: January 10, 2002
- III. Date of Amended Pre-adoption Statement of Reasons: February 28, 2002
- IV. Date of Final Statement of Reasons: May 10, 2002
- V. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: August 4, 2001  
Location: Sacramento, CA
  - (b) Discussion Hearing Date: October 4, 2001  
Location: San Diego, CA
  - (c) Discussion Hearing: Date: December 7, 2001  
Location: Long Beach, CA
  - (d) Discussion Hearing Date: April 4, 2002  
Location: Long Beach CA
  - (e) Adoption Hearing Date: May 9, 2002  
Location: Fresno, CA
- VI. Update:

Changes made to regulations originally proposed in the Initial Statement of Reasons described in the Pre-adoption Statement of Reasons and the Amended Pre-adoption Statement of Reasons, are also described below. In addition, one

technical nonsubstantive numbering change was made to the final regulations (proposed Section 155.1 was changed to 155.05) to avoid potential confusion about the proper sequence of numbering.

Since the originally proposed White Seabass Fishery Management Plan (WSFMP) regulations were published September 28, 2001, technical changes were made to three of the proposed regulations in response to additional public input, comments resulting from a peer review of the WSFMP provided to the Department in late October 2001, additional discussions with the White Seabass Advisory Committee, and the recent discovery that maximum sustainable yield (MSY) instead of optimum yield (OY) values were inadvertently used in the three suboptions of Option C of the harvest control rules presented with the Initial Statement of Reasons. The White Seabass Peer Review Panel met with Department staff on October 9, 2001 to review the peer review comments, and the Department also met two more times (December 2001 and January 2002) with the White Seabass Advisory Committee since the regulations were first noticed in September of 2001. Generally, changes made to the regulations since their publication will strengthen the definition of *Allowable Biological Catch (ABC)* that applies to all fishery management plans, modify the regulation dealing with allocation of white seabass harvests, add an option to the proposed Harvest Control Rules, and correct OY values for Option C, Suboptions 1, 2, and 3.

More specifically, changes made to the originally proposed regulatory language:

1. change the proposed definition of *Allowable Biological Catch (ABC)* proposed under the general fishery management plan definitions to clarify that *ABC* means “allowable catch” in addition to the originally proposed “range of allowable catch”, and modify the definition to reflect that the *ABC* is set by the “Commission and is based on recommendations of the Department or other scientific advisors”, rather than the more limited and generic “scientific group created by the management agency” as originally proposed [see proposed Subsection 50.01(a), Title 14, CCR].
2. change the proposed “Allocation” regulation for white seabass to make it more flexible with respect to the weight used in allocating white seabass (removes “in pounds” to provide for weights other than just weight “in pounds”), and clarify that criteria to be considered by the Commission when allocating harvests are to be “at least” those criteria included in this section [see proposed Subsections 51.04(a) and (b)].
3. add option B2 to proposed Harvest Control Rule options. As adopted by the Commission, this option would replace the other options and sets the maximum pounds of white seabass that may be taken in the sport and commercial fisheries at 1.2 million pounds based on multiplying the maximum sustainable yield (MSY Proxy) by 0.75 rather than 0.8124 (see

proposed Section 51.05, Title 14, CCR).

4. incorporate corrected OY values into suboptions 1, 2, and 3 of Option C of the Harvest Control Rules [see subsection 51.05(a)(3), Title 14, CCR].

Also, during recent discussions with the current ad hoc White Seabass Advisory Committee, it was agreed that the discussion and consideration of specific allocation rates included in Section VI (Impact of Regulatory Action) of the Initial Statement of Reasons, and included in the Notice of Proposed Changes in Regulations published September 28, 2001, and their potential effects, should be deferred until after the plan is adopted (allocation rates are not proposed to be adopted as a part of the White Seabass implementing regulation). This was determined on the basis that catches of white seabass by recreational and commercial fisheries are not expected to exceed the total annual ceiling under the preferred harvest guideline option during the next few years, providing additional time to address this important issue.

Reasons for Modification of Originally Proposed Language of Initial Statement of Reasons:

The change in definition of *ABC* (No. 1. above) will result in the regulation better reflecting the regulatory authority and process involved with setting an *ABC*. That is, it will clarify that the Commission is the entity that adopts the *ABC* (through regulation), and will authorize the *ABC* to be based on recommendations by the Department, as well as other scientific advisors. This is less generic language that also clarifies that the Department is one of the scientific groups that may make the recommendation for the *ABC*.

The proposed "Allocation" regulation (proposed Section 51.04) (No. 2. above) changes are primarily to clarify the scope of the allocation provisions, and resulted from discussions with current members of the ad hoc White Seabass Advisory Committee, most of whom assisted the Department throughout the original development of the WSFMP, and have continued to assist during current effort to bring the plan into conformance with the Marine Life Management Act (Chap. 1052, Stats. 1998). Specifically, the White Seabass Advisory Committee, with concurrence by the Department, indicated a desire to eliminate reference to annual white seabass harvest "in pounds" to provide for the potential use of other measures of harvest. The Advisory Committee and Department also agreed that factors to be considered during the allocation of white seabass should include, at a minimum ("at least"), those factors now listed under proposed Subsection 51.04(b).

The addition of harvest control rule option B2 (No. 3. above) was an option added for consideration that is intermediate to those originally proposed, and one that is more conservative than Option B1 (formerly identified as preferred

Option B in regulations accompanying the Initial Statement of Reasons). The addition of Option B2 was done following Department consideration of comments provided by the WSFMP Peer Review Panel urging a more conservative approach to management in the absence of direct measures of white seabass stock size. Option B2 was the preferred harvest control rule option adopted May 9, 2002 by the Commission. This option has a ceiling level of 1.2 million pounds, intermediate between the originally proposed Option A (Status Quo with no limit on harvest ceiling) and Option C, Suboption 3 that specifies a harvest ceiling of 283,979 pounds. Therefore, in the absence of good direct estimates of white seabass biomass, the Department concurs that it will be prudent to adopt an optimum yield (OY) more conservative than the originally preferred Option B1 (harvest ceiling computed at 1.3 million pounds).

Incorporating corrected OY values for suboptions under Option C in proposed Section 51.05 (No. 4 above) ensured that the Commission had the correct values in these options for their consideration at the time of adoption, and is in response to the recent discovery that MSY values were inadvertently substituted for OY values in the originally proposed regulatory language of the three suboptions. These OY values are smaller than MSY values because they are reduced from MSY by a safety factor (0.25 in the case of white seabass harvest control rules) to provide a buffer against overharvest. Correcting the OY values for Option C ensured that they were consistent with the White Seabass FMP at the time the Commission took final action on the White Seabass FMP implementing regulations. Optimum yields calculated for suboptions under Option C are small (212,985-339,774 pounds) compared with the OY associated with preferred Option B2 (1.2 million pounds). Option C OYs are not expected to be needed as ceilings on annual white seabass harvests due to the generally healthy status of white seabass stocks and fisheries at this time. However, if the status of white seabass stocks deteriorated significantly in the future, the suboptions under Option C might be given reconsideration.

#### Commission Action:

At the Commission's May 9, 2002 meeting the Commission adopted the newly proposed regulations and changes as recommended by the Department. This includes adoption of the Department's recommended harvest control rule option B(2) in Section 51.05 that sets the annual harvest ceiling at 1.2 million pounds. Therefore, other options provided in Section 51.05 are deleted from the final regulation.

#### VII. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

A number of responses to public comments on the White Seabass FMP received through December 2001 were responded to in the Pre-adoption Statement of

Reasons which is incorporated here by reference. Responses to comments received since December 2001 are responded to in Attachment 1 to the Final Statement of Reasons (Table 1, Response to Public Comments Received Since December 1, 2001 on the White Seabass Fishery Management Plan and Regulations). To make it easier to access all of the public comments and Department responses to comments, all of the public comments received during the rulemaking that are responded to in the Pre-adoption and Final Statements are included in one binder that accompanies this Final Statement of Reasons (see binder labeled White Seabass FMP Response to Public Comments).

VIII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

IX. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

X. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

The legislative directive to adopt changes to the White Seabass FMP that will conform the plan to the MLMA, and to adopt implementing regulations within 60 days thereafter, are clear. Few alternatives are available regarding the form that regulations implementing the plan may take, given the framework structure and processes included in the plan.

The principal alternatives involved with conforming the plan to the MLMA and adopting implementing regulations are those involving the choice of harvest control rules (setting allocation and a harvest guideline, or OY) for the white seabass fisheries. Harvest control rules include measures needed to achieve sustainable use, prevent overfishing, and rebuild depressed stocks. All of the harvest control options proposed in the plan except one will result in an optimum yield being established for white seabass sport and commercial fisheries.

Alternative 1: Defer establishing harvest control rules for white seabass fisheries for one or two years, or indefinitely, as long as total harvests for sport and commercial white seabass fisheries do not exceed recent

harvests by more than 10-25 percent. If total harvests exceed 10-25 percent of recent harvests, management measures would be invoked to reduce harvests to recent levels. This is basically the same as Option A that was considered in the White Seabass FMP, with the use of only existing regulations (status quo) at this time to manage the fishery, except this alternative would require an OY be established within two years and would invoke some action to reduce harvests if recent catches are exceeded. This would allow a delay in setting formal harvest control rules and an OY until the Department's White Seabass Management Team (WSMT) and the White Seabass Scientific and Constituent Advisory Panel (WSSCAP) have an opportunity to more thoroughly evaluate white seabass data and fisheries. The WSMT and WSSCAP could then develop and recommend to the Commission a harvest control option, including OY, for white seabass fisheries that best meets the sustainable goals for white seabass and objectives of the MLMA.

The status quo management Option A now included in the plan is expected to provide for continued rebuilding of white seabass stocks, and would likely result in fewer costs to the Department and fisheries constituents than other options. However, the status quo alternative is not a viable alternative when measured against the standards of management required by the MLMA that includes the setting of an OY. This alternative could only provide a way for the WSSCAP and White Seabass Management Team to further evaluate OYs for the white seabass fisheries if setting the harvest level at 10-25 percent above recent landings were acceptable as a temporary proxy MSY from which to calculate an OY.

(b) No Change Alternative:

This alternative would likely result in continued management of white seabass resources under current laws and regulations. This alternative would not likely result in any adverse impacts to white seabass resources and fisheries in the short term due to the generally stable fisheries and continued growth of white seabass stocks under current management. However, this alternative would do nothing to bring the plan into conformance with the MLMA and achieve adoption of implementing regulations as directed by the Legislature to achieve annual or biennial assessment of white seabass and sustainable long term management.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome

to the affected private persons than the proposed regulation.

XI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

No changes are being proposed at this time in season, size, bag, and gear provisions in conjunction with adoption of White Seabass FMP implementing regulations. Therefore, there are no expected economic impacts associated with adoption of those provisions as regulations.

Options for harvest guidelines that are included in the White Seabass FMP would set MSY/OY proxies that define an upper limit for catches of white seabass (proposed Section 51.05). This has the potential for economic effects that vary based on the degree to which they constrain fishing for white seabass.

The options provided in the plan for setting optimum yields (proxy Oys) differ in their potential impacts on fisheries sectors as follows:

Option A: Selection of this option (status quo regulations) would result in no maximum sustainable yield (MSY) or optimum yield (OY) being set for the fisheries and should, therefore, have no fiscal effect on the white seabass fisheries.

OY Option B(1) and B(2): Under these options a maximum sustainable yield (MSY) proxy of 1.6 million pounds was proposed which when allocated in the ratio indicated above would result in authorized annual harvests of 1.3 and 1.2 million pounds under options B(1) and B(2) respectively (the Commission selected B2 at the adoption hearing). Because these annual harvests are well above the recent catch levels for the fisheries no adverse economic impact to fisheries is expected to result from this option.

OY Options C: The selection of any of these options would result in fewer pounds of white seabass being authorized for recreational harvest than under Options A, B, and D. However, this option was not selected by the Commission and, therefore, no economic impacts will result from their consideration as harvest control options.

OY Options D: While the potential exists for white seabass fisheries to exceed the 855,534 pound harvest ceiling of this option, the fact that it was not adopted by the Commission means there will be no economic impact associated with this option.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The costs to the State are limited to the Department and are discussed at the end of Section III of the Description of Regulatory Action in the Initial Statement of Reasons, and are reproduced here as follows. These costs will vary depending on the extent to which various management measures and options are implemented.

Costs to the Department:

Costs to the Department associated with adoption and implementation of the proposed regulations are primarily associated with enforcement of white seabass regulations, data collection and reporting requirements, future data needs, management costs, and coordination of the White Seabass FMP administrative and ministerial responsibilities. Most of the enforcement and fisheries data collection tasks and responsibilities are already being addressed through existing programs designed to monitor and assess fisheries resources and enforce existing laws and regulations. New costs associated with implementing the plan involve primarily the administration of new White Seabass FMP related activities that involve establishment of the White Seabass Scientific and Constituent Advisory Panel, annual review and recommendations regarding the stock and fisheries, and associated rulemaking responsibilities.

Enforcement:

Within the Department, costs are attributed to programs (i.e., MLMA, Coastal Pelagic Species) and not to specific species with few exceptions. Thus, it is not possible to determine exactly how much it costs to enforce existing white seabass laws and regulations. For this reason, white seabass enforcement



costs have been calculated based on the percentage of white seabass landings divided by the total number of all nearshore fishes and white seabass landings made in 2000.

$$\text{White seabass landings (775)} \div \text{nearshore landings (8,601)} = 0.09$$

Since white seabass are primarily taken in southern California, the enforcement costs associated with the MLMA in southern California were used to approximate the cost of seabass enforcement statewide. The estimated cost of enforcing nearshore Fish and Game laws in the southern patrol district, which extends from the Monterey County line to the U.S./Mexico border, was \$562,591 in 2000. Of this, 9 percent can be attributed to time spent on white seabass and results in just over \$50,633 being spent in 2000 (Table 1).

Table 1. Enforcement costs in 2000.		
	Cost of all nearshore enforcement	Estimated cost for white seabass enforcement
Salaries (Top of Range - game warden)	\$393,983.00	\$35,458.00
Benefits @ 32%	\$126,075.00	\$11,347.00
subtotal	\$520,058.00	\$46,805.00
Operation Expenses (Travel, postage, telephones, auto and boat fuel, misc. equipment)	\$35,444.00	\$3,190.00
Overhead @ 20%	\$7,089.00	\$638.00
subtotal	\$42,533.00	\$3,828.00
Total	\$562,591.00	\$50,633.00

If fishing effort and/or landings increase, the subsequent cost of enforcing Fish and Game laws and regulations will increase. Due to the extensive size of California, it is necessary to employ a variety of measures to ensure the protection of California's wildlife and compliance with the laws of the state. These measures include land-based, ocean-based and air-based enforcement activities.

#### Data Collection and Reporting Requirements:

In order to realize the goals of the White Seabass FMP, it will be necessary to continue monitoring the commercial and recreational landings of white seabass. The monitoring effort will need to consist of collection of fishery dependent data such as commercial fishing landing receipts, commercial fishing logbooks, and

Commercial Passenger Fishing Vessel logbooks as well as dockside collection of biological data (i.e., length, weight, etc.) from both user groups. Currently, written records of fishing activity are collected under existing data collection provisions (Fish and Game Code, Sections 7923, 8010, 8043-8050; California Code of Regulation, Title 14, Sections 190, 195). The collection of biological data is authorized under Fish and Game Code Section 8026. Once the data are collected and edited for accuracy, analysis of annual catch data and long-term white seabass trends is needed.

The estimated costs have been separated into two categories: 1) statistical and 2) biological sampling (Tables 2 and 3). The Department maintains the Commercial Fisheries Information System (CFIS) database that has been in existence since the early 1920s. Annual costs related to entering, editing, and maintaining the white seabass recreational and commercial fisheries information in the CFIS system are estimated to be \$16,411.

Table 2. Estimated cost of collection and maintenance of statistical (landing receipt and logbook) data.	
Editing receipts and logs; data entry	\$679.00
Maintain databases	\$287.00
Printing receipts and logbooks	\$5,000.00
Supplies	\$500.00
Telephones	\$360.00
Mailing	\$1,500.00
Personnel - top of range (1 Pm @ marine biologist level, 1 Pm @ program technician level)	\$6,125.00
Benefits @32%	\$1,960.00
Total	\$16,411.00

Since 1983, the Department has conducted a market sampling program for white seabass, other nearshore finfish, sharks, and swordfish, and invertebrates such as spot prawn and ridgeback prawn. The sampling program involved opportunistic sampling of the commercial catches in San Diego County, Los Angeles/Orange Counties and in Santa Barbara/Ventura Counties. In 1998, the Department samplers began to scan commercially-caught white seabass with a coded-wire tag detector to see if hatchery-reared fish were contributing to the commercial fishery. The cost of maintaining a fishery dependent sampling program annually is nearly \$91,000.

Table 3. Estimated cost of biological sampling.	
Personnel costs (2.5 PY@ F&W Scientific Aide)	\$56,970.00
Travel and vehicle maintenance	\$8,000.00
Supplies	\$3,500.00
Telephone	\$825.00
Data processing	\$900.00
Rent	\$6,000.00
Training	\$1,000.00
Indirect costs	\$13,802.00
Total	\$90,997.00

All of the above costs summarize the effort now directed to white seabass through the use of Fish and Game Preservation Fund and Sportfish Restoration Act monies. Since these costs will continue with or without the plan, they can be considered sunk costs with regard to the WSFMP and regulations implementing the plan. The total annual cost of collecting fishery dependent data is \$107,408.

Another source of fishery dependent data available to the state, and which is relied upon heavily, is the Marine Recreational Fisheries Statistical Survey (MRFSS) conducted by the Pacific States Marine Fisheries Commission. This coastwide sampling program intercepts recreational anglers at launch ramps, piers and jetties, and on commercial passenger fishing vessels (CPFVs). The data is provided at a minimal cost to the state and is currently our only source of information on the extent of take of white seabass by shore-based and private or rental boat fishermen, which is estimated to be more than 50 percent of the recreational catch of seabass.

#### Future Data Needs:

While white seabass are an important species to the recreational and commercial fishermen of the state, very little biological information has been gathered in the past 30 years. Questions exist about essential fish habitats for larval, juvenile and adult stages, about age-at-first maturity, and the accuracy of current estimates of fishing mortality and natural mortality. In addition, there is a need to determine the biomass of the white seabass populations and delve further into genetic variation within local stocks and what effect hatchery-reared stocks will have on the virility of wild stocks. There are several fishery-based issues that need to be investigated, such as hooking mortality and survivability of seabass released by commercial and recreational fishermen.

The following figures can be viewed as either new costs required by the White Seabass FMP, or reallocation of more of the Marine Region budget from other species to white seabass. The additional costs are summarized in Table 4. In addition to the costs described in Table 4, it would be necessary to contract for further investigation of white seabass genetics and additional work on white seabass habitat needs. The costs of contracting for this work would be approximately \$200,000 annually for a 3 to 5-year period.

Table 4. Cost of fishery independent data collection.	
Personnel costs - top of range (1.5 @ Associate marine biologist level, 1 PY @ PI marine biologist level)	\$123,546.00
Benefits @32%	\$39,535.00
Travel, supplies, fuel, gear, etc.	\$150,000.00
Overhead @ 20%	\$30,000.00
Ship time (20 days)	\$70,000.00
Special surveys (22 days)	\$4,400.00
Total	\$417,481.00

As mentioned above, the Department utilizes the MRFSS data and CPFV logbook data when evaluating the magnitude of the recreational take of white seabass. Currently, the Department does not contribute to the costs associated with the MRFSS survey. However in the future, it may become necessary for the Department to provide funding for this survey for one of two reasons: 1) the current funding provided by the National Marine Fisheries Service may be reduced or eliminated, as happened from 1991 through 1993, and 2) if the funding level is not increased from its present level in the future, the accuracy of the data will suffer. Should these events take place, the state would need to find another way to estimate recreational take for private/rental boats and shore-based fishing or provide between \$350,000 to \$400,000 annually to maintain just the southern California portion of the MRFSS study where white seabass are most prevalent.

The estimated cost of conducting fishery independent and fishery dependent research could total between \$724,889 and 1.2 million annually.

### Management Costs:

The administrative cost is calculated by estimating the time to perform certain tasks, such as reviewing and editing documents. Generally, these kinds of processing costs are underestimated, because there is no way to determine how difficult some issues may be. Nevertheless, estimates are useful for determining what the actual costs may be and for comparing different options that may be proposed.

### Coordination of the White Seabass Fisheries Management Plan:

The implementation of the WSFMP will require that Department staff perform a variety of new activities. Among these are: 1) analysis of commercial and recreational catch data, preparation of reports on current fishery and oceanographic trends, as well as updates on research for the white seabass scientific and constituent advisory panel (WSSCAP) and the Commission; 2) organization of the annual advisory committee meeting and any public meetings or scoping sessions; 3) preparation of reviews of all management recommendations made by the WSSCAP, or by other interested parties, to address potential impacts to the white seabass resource as well as socioeconomic impacts on the user groups; and 4) preparation of various notices and regulatory packages necessary to maintain compliance with the Administrative Procedures Act (i.e., notice of intent, rule making packages) and with the California Environmental Quality Act (as outlined in Section 1.4 of the Plan).

In addition, the Department staff will have to travel to public meetings and Commission hearings to give presentations, answer questions and hear public input. The costs associated with the coordination of the WSFMP is anticipated to total \$93,966 annually (Table 5).

Table 5. Cost of administration/coordination for the White Seabass FMP.	
Personnel - top of range (0.5 PY Associate Marine Biologist, 0.5 PY Office Technician)	\$46,944.00
Benefits @32%	\$15,022.00
Operating expense/travel	\$10,000.00
Overhead @20%	<u>\$2,000.00</u>
Total	\$73,966.00

- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

## Updated Informative Digest (Policy Statement Overview)

Under existing law, the Fish and Game Commission (Commission) is authorized to regulate commercial and recreational fisheries for white seabass (Fish and Game Code Sections 200, 205, and 7071). The Marine Life Management Act of 1998 (MLMA) directs that fisheries be managed pursuant to fishery management plans and that a White Seabass Fishery Management Plan (White Seabass FMP or plan) that was developed and approved by the Commission in 1996 remain in effect until amended to conform with the MLMA. The MLMA further directs that the White Seabass FMP be amended on or before January 1, 2002, and that the Commission adopt implementing regulations not later than 60 days after the plan amendments are adopted by the Commission. The MLMA authorizes the Commission to regulate fisheries for white seabass and to make Fish and Game Code Statutes for white seabass inoperative.

Existing white seabass laws and regulations protect subadult and young adult white seabass through a 28-inch minimum size limit, a 3-fish daily bag and possession limit, commercial gear (net) restrictions (prohibition on use of round haul and minimum mesh size for gill and trammel nets), and an annual spring season fishing closure (March 15 through June 15) to protect adult spawning white seabass with a provision authorizing the take of one legal size white seabass during the spawning season closure by sportfishing and one legal size white seabass if taken incidental to fishing with gill or trammel nets. Existing regulatory measures for white seabass have been adopted or adjusted (amended) during recent decades toward the goal of rebuilding white seabass stocks off California.

Regulation changes proposed to, and adopted by, the Commission will add new Chapter 5.5 dedicated to regulations implementing fishery management plans adopted pursuant to the MLMA. New Articles 1 and 2 of Chapter 5.5 include regulations that apply to fishery management plans in general (Article 1) and the White Seabass FMP in particular (Article 2). Several new Title 14 sections (50.00, 50.01, 50.02, 50.03, 51.00, 51.01, 51.02, 51.04, 51.05, 155.01, 155.05, and 155.10) are added to, or amended (109) in Title 14, CCR. Fish and Game Code Section 8383 (the closed commercial white seabass season that was adopted in June 2000 as Section 155, Title 14, CCR) and Section 8383.5 (commercial white seabass minimum size limit) are made inoperative in the Fish and Game Code. The proposed new regulations specify definitions that apply to management involving fishery management plans in general and the white seabass fishery specifically. Also, regulations describe the purpose and scope of the White Seabass FMP, where recreational and commercial regulations are located in Title 14, and the process and timing of white seabass monitoring. Regulations adopted by the Commission authorize the director to appoint a White Seabass Scientific and Constituent Advisory Panel (WSSCAP), describe general criteria for membership on the WSSCAP, and describe the general timing and processes for developing, considering, and adopting regulatory changes associated with white seabass fishery management, plan amendment, determination of an annual harvest guideline that sets an annual optimum yield of 1.2 million pounds of white seabass, and considerations that guide white seabass allocation.

More specifically, the regulations:

- 1) Add Section 50.00 to Article 1 of new Chapter 5.5 describing the location of regulations applicable to sport fishing, commercial fishing, and a fishery management plan for a species or species group.
- 2) Add Section 50.01 containing 24 definitions that apply generally to fishery management plans and related fisheries management measures (unless defined otherwise in regulations specific to a fishery management plan), and specify that definitions found in Chapter 1 of Title 14, CCR, and Chapters 1 and 2 of Division 0.5 of the Fish and Game Code will apply to FMPs where not in conflict with definitions found in an FMP.
- 3) Add Section 50.02 describing changes in management measures and actions that trigger the need for amendment of an FMP.
- 4) Add Section 50.03 describing three processes for taking management action to implement routine annual changes in management that range from a “prescribed action” involving no public notice where regulatory guidelines are first adopted by the Commission, to a “full rulemaking action” involving at least three Commission meetings to hear, consider, and approve measures.
- 5) Add Section 51.00 to Article 2 of new Chapter 5.5 describing the purpose and scope of the White Seabass FMP, and the location in Title 14 of white seabass sport and commercial fishing provisions.
- 6) Add Section 51.01 with definitions for *Fishing year*, *overfished stock*, *point of concern*, *points of concern process*, *socio-economic benefits*, *white seabass*, *white seabass fishery*, and *White Seabass Fishery Management Plan*, that are specific to the White Seabass FMP.
- 7) Add Section 51.02 that directs that white seabass management is to conform to the goals, objectives, criteria, and procedures of the White Seabass FMP, specifies that monitoring of fishing is done annually, authorizes the Director to appoint a White Seabass Scientific and Constituent Advisory Panel (WSSCAP), and sets a general time line for annual development and adoption of specifications and management measures.
- 8) Add Section 51.04 which directs that white seabass fishery allocations be determined in a manner consistent with options in the White Seabass FMP, describes factors that, at a minimum, will be considered during a change in allocation of white seabass, and provides that modification of a direct allocation to a fishery may be “a routine management measure” where criteria are adopted in regulation.
- 9) Add Section 51.05 describing the process for selection of the annual harvest of white seabass and identifies Option B2 as the OY proxy of 1.2 million pounds adopted by the Commission.
- 10) Add Section 155.01 that adopts as a regulation the current 28-inch commercial minimum size limit for white seabass that presently is contained in Fish and Game Code Section 8383.5, and makes Section 8383.5 inoperative.
- 11) Add Section 155.05 that adopts as regulation current restrictions of Fish and Game Code Sections 2362 and 8623, on the use of purse seine and other round haul nets off California, and adopts the language of Section 109, Title 14, CCR as subsection (d) of proposed Section 155.05 regarding requirements for delivery, inspection, and clearance of white seabass on a vessel carrying a purse seine or other round haul net.



12) Add Section 155.10 that adopts as regulations current requirements of Fish and Game Code Sections 8623 and 8576 governing vessels landing white seabass with gill nets, including minimum mesh size, incidental take of white seabass during the season closure, and the incidental take of thresher and shortfin mako shark in drift gill nets when fishing for white seabass.

13) Remove reference to white seabass from Section 109 to avoid duplication with proposed new Section 155.1(subsection d).

14) Make inoperative Fish and Game Code Sections 8383 and 8383.5 because they will now appear in regulations of Title 14, CCR.

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
ADDENDUM TO FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Sections 50.00, 50.01, 50.02, and 50.03 to Article 1, add  
Sections 51.00, 51.01, 51.02, 51.04, and 51.05 to Article 2 of  
Chapter 5.5, Subdivision 1 of Division 1,  
Title 14, California Code of Regulations (CCR), and  
add Sections 155.01, 155.05, and 155.10 to Title 14, CCR  
Amend Section 109, Title 14, CCR.  
Re: Fishery Management Plans (FMP) Generally,  
White Seabass Fishery Management Plan (Plan),  
Adoption of White Seabass Commercial Laws as Regulations.

I. Date of Addendum to Final Statement of Reasons: July 18, 2002

VI. Update:

The opening header for the regulatory action was edited to delete reference to sections of the Fish and Game Code being made inoperative because no such action was taken.

The following information is provided to clarify the necessity of adopting regulations applicable to fishery management plans in general, and implementing the White Seabass Fishery Management Plan (White Seabass FMP).

Section 50.02 Plan Amendment: Amendment of fishery management plans (FMPs) is expected in the future as increasingly comprehensive management of white seabass, nearshore fish stocks, and other species and species groups is undertaken through the FMP process. Amendment of an FMP is a complex and labor intensive task involving an extensive development and adoption process including input from advisory committees, public hearings, and an extended period for public comment and peer review. Therefore, fishery management plan amendment can significantly affect Department programs. At the same time, the five actions identified in the regulation for which plan amendments would be required, are of great interest to both the Department and nearshore fishery stakeholders because of possible implications for effects on the resource and fisheries. For example, changes to management objectives has significance for how the resource is allocated depending, for instance, if maximum yield in pounds or maximizing recreational fishing opportunities is the objective. Changes to species in the management unit can have significant effects on fisheries or research if, for example, protected species are taken in association with its harvest, or if resources must be diverted to gather basic management

information on a new species. A change in the definition of an overfished stock could result in increased harvests, fishery closures, or reallocation of annual quotas depending on whether the definition of overfished results in more or less fish available to the fisheries, or changes how the management measures are adjusted to correct the overfished condition. Procedures in a management plan guide how assessment may be carried out, when assessments and recommendations are brought to the Commission, how fisheries are to be allocated, how annual harvest guidelines (optimum yields, total allowable catches) are calculated, and can have direct effects on the results of assessments and fisheries participants. Revision to management measures fixed in an FMP could involve any of a number of management options adopted in a plan. For example, the use of fishery independent assessment data instead of historical catch data (the latter are proposed in the White Seabass FMP, and Nearshore FMP) to derive an annual catch quota could result in fewer fish or pounds of fish authorized for take in the fisheries. Amendment of the plan in conjunction with these actions assures fishery stakeholders, the Department, and Commission that the proposed action and alternatives are fully explored.

The Marine Life Management Act (MLMA), that directs the development, adoption, and implementation of fishery management plans, stresses the involvement of the public in the FMP process, and the Department has devoted a great deal of time and effort to complying with the spirit and intent of the MLMA in achieving meaningful public participation. This includes development of a process described in Chapter 5: 'Public Involvement in Fishery Management' in the 'Master Plan: A Guide for the Development of Fishery Management Plans' (directed to be prepared by the MLMA). Chapter 5 of the Master Plan acknowledges that "Meaningful involvement requires being part of the process from the early stage of deciding which fisheries need management plans through the preparation adoption, implementation, and amendment of those plans." The five actions identified in the regulation are not the only actions that might trigger a plan amendment process. However, these five actions were recognized by the Department and fisheries constituents involved with plan development to be the most likely examples of actions that could have sufficient impact on the resource and fisheries that they should coincide with a plan amendment process that triggers constituent involvement, and results in actions taken being clearly reflected in the plan. Therefore, the proposed regulation will offer greater assurance to white seabass stakeholders, the Commission, and the Department that the five actions identified in the regulation, with their potentially significant effects on the resource and fisheries, will be accompanied by full public and agency participation through the plan amendment process. At the same time, the comprehensive requirements associated with a plan amendment are expected to stimulate rigorous examination of the pros and cons associated with any proposal to take one of the five actions, which, in turn, can strengthen the plan if the action is taken, or lessen the likelihood that an action is adopted that

could weaken the plan or have an unexpected and adverse impact.

Section 50.03. Framework Review Processes. The framework review processes are revised to be consistent with the Administrative Procedure Act. Originally proposed subsection 50.03(a)(2) ('Notice Action') is deleted from the regulations and originally proposed 50.03(a)(3) becomes 50.03(a)(2).

Section 51.01, Definitions: The Department has sought to maintain a measure of consistency in its management plans and regulations with the federal fisheries management planning process and rules because the same fisheries constituents are increasingly involved with the management actions and regulatory processes occurring at both the state and federal level [involving the Pacific Fishery Management Council (Council) and National Marine Fisheries Service in addition to the Commission]. Defining common fisheries management terminology in regulation is commonly practiced by both state and federal fisheries management agencies and serves to provide all fisheries constituents with a clearer understanding of the interpretation and application of management actions and rules, and assists enforcement officers and the courts with more uniform enforcement and adjudication of regulations.'

Subsection 51.01(b) *Overfished Stock*: The Marine Life Management Act or 1998 (MLMA) directs that each fishery management plan (FMP) or plan amendment [including the White Seabass FMP (plan) specify criteria for identifying when the fishery is overfished [Fish and Game Code Subsection 7086(a)]. This is an important element of the MLMA's primary goal of sustainable management of resources and fisheries under FMPs prepared pursuant to the MLMA (Fish and Game Code section 7056 and 7066). Adoption of a definition of overfished stock provides the public, the Department, and the Commission with a clear formula that determines at what point an overfished condition exists in the white seabass fisheries. This is a warning signal that adjustments to management measures need to be explored in order to rebuild the stock and fisheries. This definition is also important because an overfished condition is one of six specific 'points of concern' [51.01(c)(3)] identified in the plan and regulation as key indicators signifying potential problems with the resource and fisheries that may trigger changes in management measures for white seabass.

White seabass management is presently in what is termed a data poor situation relative to qualitative stock biomass estimates that often involve detailed

information on the size of individual year classes within a population over time. This results in the need to develop alternative methods to gauge when the stock has reached an overfished condition. Information on recreational and commercial white seabass catches and recruitment indices are collected annually and are currently the best suited to assess the status of white seabass stocks. With regard to the conditions that define an overfished white seabass stock, declines in catch, size of fish, and recruitment indices, occurring independently of each other, may indicate overfishing in one or the other fishery is occurring but that stock is not yet overfished. However, where all three downward trends are occurring together during consecutive years relative to a reasonably long period (5 years) preceding such declines, and this is reflected in both fisheries, it is reasonable to conclude that an overfished condition exists.

Subsection 51.01(c). *Point of concern*: This definition serves to identify for the public and Commission six specific and important conditions suggesting problems with the white seabass resource or fisheries that require immediate attention. State and Federal fishery managers and user group representatives agree that these conditions are sufficiently important indicator tools of potential problems that their adoption as a definition in regulation, along with the 'point of concern process' will help ensure that both the public and Department have the ability to initiate immediate Commission action to address the condition(s). That is, as indicated in the White Seabass FMP, under the points of concern process, any person may request Commission consideration of adjustment to management measures through appropriate regulatory action.

Subsection 51.01(d). *Points of concern process*: This definition is needed in conjunction with subsection 51.01(c) to clarify for the public, Department, and Commission that the Commission may initiate and consider management changes for white seabass in a timely manner (at any time of year) where one or more points of concern exist. As a result of the Commission's increasingly demanding regulatory responsibilities and full rulemaking calendar the Commission generally tries to schedule regulatory actions for different fisheries and wildlife issues during specific times of the year (in the case of sport fishing, during the summer and fall of odd number years). The process and timing of adoption to changes in fishing regulations is generally familiar to most fisheries representatives, which raised concerns during adoption of the White Seabass FMP for the ability of the Commission under the current scheduling system to deal with critically important white seabass management issues should they arise. Therefore, the six points of concern and points of concern process are proposed for adoption to provide greater assurances that specific and potentially serious issues related to sustainable management of white seabass could be raised by any person before the Commission at anytime during the year. In combination with subsection 51.02(e), this regulation provides the public with an idea of those measures that are given special significance with respect to public

and Department access to the Commission, while noting that less critical management issues, such as annual updates on white seabass status, providing for greater fishing opportunity, or actions to realize greater potential yield from a fishery, are expected to be dealt with on a more regularly scheduled basis in the fall and winter of the year. The point of concern process is intended to be implemented through the full rulemaking process described under Section 50.03(a)(1), or the 'prescribed action' described pursuant to proposed Section 50.03(a)(2) where the Commission has adopted, and the Office of Administrative Law has approved appropriate regulations with formulae or other criteria under which the Commission shall act to adjust management measures in response to identified points of concern.

Subsection 51.01(h). *White Seabass Fishery Management Plan*: The definition of White Seabass Fishery Management Plan is changed slightly to incorporate the date that the plan, which was recently revised to conform to the Marine Life Management Act of 1998, was adopted by the Commission (on April 4, 2002), rather than the date in 1996 when the Commission adopted a pilot White Seabass FMP. This better identifies the recent nature of the current plan and recognizes the substantial revisions made to it.

Section 51.04, Allocation: Originally proposed subsection (c), that would identify a modification of a direct allocation to a fishery as a routine management measure, is deleted from the regulation. The removal of this provision from the regulation will have no practical effect at this time on allocation as no specific allocations have yet been set for white seabass fisheries, and no regulations have yet been developed to specify the conditions that will control allocation ratios in the future. Eliminating Subsection 51.04(c) will avoid any concern that direct allocations will occur without compliance with the Administrative Procedures Act.

Section 155.01. White Seabass Commercial Size Limit: The originally proposed subsection (b), that would make Fish and Game Code Section 8383.5 inoperative, is deleted from the regulation. Due to an oversight, the requirement of Fish and Game Code Section 7078(d), requiring the Commission to provide a fishery management plan (plan) to the Legislature where the plan or plan amendment would make a statute inoperative, was not carried out prior to Commission adoption of the White Seabass FMP and implementing regulations. The Plan was recently provided to the Legislature, but after the date of adoption of the Plan. Rather than delay adoption of the implementing regulations until the Commission could readopt the entire package of regulations, it is preferable to delete the subsection. Deleting subsection (b) will have no practical effect on the white seabass commercial minimum size limit. The size limit will remain in statute and the Commission will be able to amend the size limit through Section 155.01 if necessary, and make the statute inoperative at that time to avoid

conflicts between Title 14 and the Fish and Game Code.

Section 155.05. Use of Purse Seine and Roundhaul Nets and Delivery to California Ports: Under subsection 155.05(d), which is language originally enacted in the Fish and Game Code, there is reference to a form that has not been used for several decades to meet the requirements of the section because custom inspection forms are checked to determine if a vessel is returning from waters off Mexico. Reference to the form in these provisions dates back to the 1950's when white seabass and other species were being taken in purse seine gear south of the U.S.-Mexico border and brought into California on these vessels. Purse seine and other roundhaul gear is prohibited for use in taking white seabass in waters off California, and since 1980 Mexico has not issued permits for U.S. vessels to fish off Mexico. Therefore, while we wish to continue the prohibition on the use of roundhaul gear to take white seabass off California, and wish to continue to verify that roundhaul vessels with white seabass aboard were taken in Mexico, the form identified in subsection (d), is not needed for this purpose.

Section 155.10. Gill Net Mesh Size, Closed Season, Possession of Thresher and Shortfin Mako: The language of subsection (a) that references the mesh size for which 20 percent by number of a load of fish, or 10 fish may be white seabass if taken during the period June 16 through March 14, was corrected to reflect existing Fish and Game Code language that was originally intended to be adopted. That is, during the process of copying or converting the statutory language of Fish and Game Code subsection 8623(d) to the regulatory language of subsection 155.10, Title 14, CCR, the net mesh size was incorrectly cited in the regulatory language as 'not less than' 6 inches in mesh, when the language should have read 'from 3 1/2 to' 6 inches in length. This correction to the language will also be important in preventing an inadvertent adverse impact on white seabass gill net fishermen that would otherwise be restricted to the take of 10 white seabass each day, or 20 percent by number of a load of fish.

(d) Identification of Reports or Documents Supporting Regulation Change: The results of a peer review of the White Seabass FMP (comments from peer reviewers), and the Department's response to those comments were inadvertently omitted from the list of reports and documents supporting regulation change. The peer review documents entitled Summary of Review Comments White Seabass Fishery Management Plan, and Response to Peer Review Comments White Seabass Fishery Management Plan, 07 March 2002, which were available to the public for more than 45 days prior to adoption of the White Seabass FMP and implementing regulations, are hereby included in the rulemaking file.

New Chapter is added:

Chapter 5.5. Fishery Management Plans.

New Article is added:

Article 1. Fishery Management Plans Generally.

Section 50.00 is added to new Article 1 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

50.00. Application and Location of Fishery Management Plan Regulations, and Designation of Weight in Pounds.

(a) Unless specified otherwise in a fishery management plan, or regulations adopted to implement a fishery management plan, the provisions of Article 1, Chapter 5.5, of Subdivision 1 apply to a fishery management plan (FMP) adopted by the Fish and Game Commission under authority of the Marine Life Management Act (MLMA) and other applicable state and federal laws and regulations.

(b) A regulation implementing a fishery management plan that is applicable to both sport and commercial fisheries is found in this Chapter. A fishery management plan regulation that is specific to ocean sport fishing is found with ocean sportfishing regulations in Chapter 4 of Subdivision 1, beginning with Section 27.00. A fishery management plan regulation specific to commercial fishing is found with commercial fishing regulations in Chapter 6 of Subdivision 1 beginning with Section 100.

(c) The presentation of fisheries and population data will be made using weight in pounds as the standard, unless designated otherwise in regulations adopted specific to a fishery management plan.

NOTE

Authority cited: Section 7071, Fish and Game Code.

Reference: Sections 7071 and 7075, Fish and Game Code.

Section 50.01 is added to new Article 1 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

50.01. Definitions:

Definitions contained in Chapter 1 of Subdivision 1, Division 1, Title 14, CCR, and Chapters 1 and 2 of Division 0.5 of the Fish and Game Code, apply to fishery management plans adopted under this Chapter in addition to, and where not in conflict with, the definitions of this section or definitions specific to an FMP.

(a) *Allowable Biological Catch (ABC)* means the allowable catch, or the range of allowable catch for a species or species group, which is set each year by the Commission based on recommendations by the Department or other scientific advisors.



- (b) Allocation means apportioning a harvest guideline, quota, or optimum yield between or among segments of the fishery.
- (c) Bait net means a lampara or roundhaul type net, the mesh of which is constructed of twine not exceeding Standard No. 9 medium cotton seine twine or synthetic twine of equivalent size or strength. Except for drum seines and other round haul nets authorized under a permit issued by the department pursuant to Fish and Game Code Section 8780, the nets may not have rings along the lead line or any method of pursuing the bottom of the net.
- (d) Commission means the California Fish and Game Commission.
- (e) Department means the California Department of Fish and Game.
- (f) Director means the Director of the Department of Fish and Game.
- (g) Executive Director means the Executive Director of the Fish and Game Commission
- (h) FMP means Fishery Management Plan.
- (i) FMP Framework/Framework structure means the structure and process described in the FMP that provides for the application and adjustment of management measures pursuant to section 50.03 within the scope and criteria of the FMP and implementing regulations, without the need to annually amend the FMP.
- (j) Harvest Control Rules means options for management that describe the amount and type of harvesting that may be applied to a stock or stocks.
- (k) Harvest guideline means a specified numerical harvest objective that, when attained or expected to be attained, does not require closure of a fishery.
- (l) Management action means an action taken by the commission or department to implement management measures.
- (m) Management measure means a specification or measure used to manage and regulate fishing for a stock under an FMP and may include, but is not limited to, resource allocation, harvest control rules, quotas, licenses and permits, season, size, gear, bag, and landing limitations, fishery monitoring and reporting requirements, regulation of bycatch, and enforcement measures.
- (n) Maximum sustainable yield or MSY means maximum sustainable yield as defined in Fish and Game Code Section 96.5 or a substitute for MSY (MSY proxy).
- (o) Optimum yield or OY means optimum yield as defined in Fish and Game Code Section 97 or a substitute for OY.(OY proxy).
- (p) Permit year means the period from April 1 through March 31.
- (q) Quota means a specified numerical harvest objective for the attainment (or expected attainment) of which may cause closure of the fishery.
- (r) Round weight means the weight of fish in a whole condition at the time it is caught prior to being cleaned or dressed.
- (s) Round-weight equivalent means the weight of fish in a cleaned or dressed condition adjusted by a factor to approximate round weight.
- (t) Routine management measure means a management measure that is likely to be adjusted on a biennial, annual or more frequent basis and is categorized as routine in the plan following an analysis of the need for the measure, its impacts, and the rationale for its use.
- (u) Socioeconomic process means a process authorizing the commission to apply or

adjust management measures pursuant to section 50.03 for a species annually or in season based on social or economic factors following preparation of a report including proposed management measures, a description of alternatives considered, and an analysis that addresses five criteria including how the action will accomplish at least one of 15 listed benefits to the fishery.

(v) *Specification* means a numerical or descriptive designation of a management objective, including but not limited to: Allowable Biological Catch (ABC); harvest guideline; quota; allocation; or an allocation for a segment of the fishery or area, gear, season, fishery, or other subdivision.

(w) *Stock* means any species, species complex, population, or subpopulation that is actively managed within a geographic area.

(x) *Weight* means the weight is in pounds and round weight or round-weight equivalent, unless designated otherwise in regulations adopted specific to a fishery management plan. Where round weight is converted to number of fish, a conversion factor shall be based on the most current information readily available to the department.

#### NOTE

Authority cited: Section 7071, Fish and Game Code.

Reference: Section 7071, 7075 and 7083, Fish and Game Code.

50.02 is added to new Article 1 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

#### 50.02. Plan Amendment.

(a) The following actions shall first require amendment of a Fishery Management Plan (FMP):

(1) change to a management objective;

(2) change of species in the management plan;

(3) change in the definition of an overfished stock as defined in the FMP;

(4) amendment to any procedure required by the FMP; and

(5) revision to any management measure which is fixed in the FMP.

#### NOTE

Authority cited: Sections 7071 and 7075, Fish and Game Code.

Reference: Sections 7071, 7075, 7078, 7086 and 7087, Fish and Game Code.

Section 50.03 is added to new Article 1 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

#### 50.03. Framework Review Processes.

(a) Two processes for taking management action are available to implement routine annual changes in management of fish stocks and fisheries within the Framework Review Process.

(1) *Rulemaking Action*: The commission may conduct a rulemaking action pursuant to

the Administrative Procedure Act including holding at least two or more commission meetings to hear, consider and approve measures affecting any aspect of management and fisheries, including direct allocation of a catch quota or an optimum yield, with adoption of regulations reflecting the commission's action.

(2) *Prescribed action*: A prescribed action is ministerial and may include a fishing season or gear closure when a harvest quota has been achieved or include other actions to meet sustainable management goals when the prescribed action is nondiscretionary and specifically provided for in existing regulation such that no further rulemaking under Subsection (a)(1) is required.

(b) Nothing in this section precludes the Director from exercising authority to take emergency action pursuant to Fish and Game Code Section 7710, or of the commission to take emergency regulatory action under Section 11346.1 of the Government Code, or under Section 240 of the Fish and Game Code.

NOTE

Authority cited: Section 7071, Fish and Game Code.

Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

New Article is added:

Article 2. White Seabass Fishery Management Plan

Section 51.00 is added to new Article 2 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

51.00. Purpose and scope.

(a) This Article implements the White Seabass Fishery Management Plan (WSFMP or plan), as adopted and amended by the California Fish and Game Commission consistent with the goals, objectives and procedures of the WSFMP and the Marine Life Management Act of 1998. These regulations, in combination with other applicable provisions of the Fish and Game Code and Title 14, CCR, govern management and regulation of white seabass stocks and fisheries.

(b) A regulation implementing this fishery management plan that is applicable to both sport and commercial fisheries is found in this Chapter. A fishery management plan regulation that is specific to ocean sport fishing is found with ocean sportfishing regulations in Chapter 4 of Subdivision 1, beginning with Section 27.00. A fishery management plan regulation specific to commercial fishing is found with commercial fishing regulations in Chapter 6 of Subdivision 1 beginning with Section 155.

NOTE

Authority cited: Section 7071, Fish and Game Code.

Reference: Sections 7070, 7071 and 7075, Fish and Game Code.

Section 51.01 is added to new Article 2 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

#### 51.01. Definitions.

These definitions are in addition to those definitions specified in Section 50.01.

(a) *Fishing year* under the White Seabass Management Plan means the period from September 1 through August 31.

(b) *Overfished stock* means that the total annual commercial catch of white seabass in pounds reported landed on fish receipts provided to the department for the past two consecutive years declined each year by 20 percent or greater from the prior five-year average of landings, a 20 percent decline occurs in the number of fish and average size of fish (round weight) for the same two consecutive years for white seabass caught in the sport fishery as determined based on best available data, and recruitment indices for juvenile white seabass decline each year by 30 percent or greater from the prior 5-year average of recruitment. This definition will remain in use until the White Seabass Scientific and Constituent Advisory Panel (WSSCAP) develops, and the commission adopts, a different definition [required by Fish and Game Code Subsection 7086(a)].

(c) *Point of concern* means one or more of the following conditions affecting white seabass that, if found or expected to exist, may trigger the application or adjustment of one or more management measures by the commission.

(1) catch is expected to exceed the current harvest guideline or quota;

(2) any adverse or significant change in the biological characteristics of white seabass (age composition, size composition, age at maturity, or recruitment) is discovered;

(3) an overfishing condition exists or is imminent;

(4) any adverse or significant change in the availability of a managed species' forage for dependent species or in the status of a dependent species is discovered;

(5) new information on the status of white seabass;

(6) an error in data or a stock assessment is detected that significantly changes estimates of impacts due to current management.

(d) *Points of concern process* means a process authorizing the commission to apply or adjust fishery management measures at any time during the year based on confirmation of the existence of one or more resource-based points of concern identified in a fishery management plan pursuant to Subsections 50.03(a)(1) and (2).

(e) *Socio-economic benefits* means one or more social or economic issues as specified in the FMP affecting white seabass that, if found or expected to exist, may trigger the application or adjustment of one or more management measures by the commission pursuant to Section 50.03.

(f) *White seabass* means *Atractoscion nobilis*.

(g) *White seabass fishery* means fishing for or harvesting of white seabass inside and outside of California by vessels subject to California law.

(h) *White Seabass Fishery Management Plan* means the White Seabass Fishery Management Plan approved by the Fish and Game Commission on April 4, 2002, which is hereby incorporated by reference except for 5.3.2B and 5.3.3.

#### NOTE

Authority cited: Sections 7071 and 7086, Fish and Game Code.

Reference: Sections 7071, 7075, 7082 and 7086, Fish and Game Code.

Section 51.02 is added to new Article 2 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

51.02. Process and Timing

(a) White seabass management will conform with the goals, objectives, criteria, and procedures of the White Seabass Fishery Management Plan and other applicable laws and regulations, including the points of concern, socioeconomic, and framework review processes.

(b) The director may appoint a White Seabass Scientific and Constituent Advisory Panel (WSSCAP) to assist the department and commission with review of white seabass fishery assessments, management proposals, and plan amendments. Membership on the WSSCAP should be reserved for those knowledgeable in the principals of fisheries science, including stock assessment, and/or those interested in, and involved with, white seabass resource and fisheries. The director may determine the terms and conditions of membership on the WSSCAP.

(c) Monitoring and assessment of white seabass fisheries shall be conducted annually utilizing best available data, but at a minimum, the collection and review of reported catches. The department will provide management recommendations to the commission annually, and in-season if needed, based on criteria to be developed by the department's White Seabass Management Team in cooperation with the White Seabass Scientific and Constituent Advisory Panel, and approved by the commission.

(d) When acting to adjust management of a species within a fishery management unit based on non-biological and socioeconomic issues, the commission will follow the process specified in the fishery management plan and Section 50.03.

(e) Annual specifications and management measures are generally developed in the fall and considered and adopted at two commission meetings held during the period from November through April depending on the timing and complexity of the issues. However, management measures and actions may be developed, considered, adopted, and implemented at any time of year according to the criteria and procedures of the points of concern process.

NOTE

Authority cited: Section 7071, Fish and Game Code.

Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

Section 51.04 is added to new Article 2 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

51.04. Allocation.

(a) Allocation of an annual white seabass harvest between recreational and commercial fisheries will be determined consistent with options specified in the White Seabass Fishery Management Plan.

(b) The commission shall consider at least the following factors in the allocation of white seabass:

(1) present participation in and dependence on the fisheries, including alternative fisheries;

(2) historical fishing practices in, and historical dependence on, the fisheries;

(3) the economics of the fisheries;

(4) any agreement between the affected participants in the fisheries;

(5) potential biological impacts on white seabass, associated species or their habitats affected by the allocation; and

(6) consistency with the goals and objectives of this WSFMP and the MLMA.

NOTE

Authority cited: Section 7071, Fish and Game Code.

Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

Section 51.05 is added to new Article 2 of new Chapter 5.5, Subdivision 1 of Title 14, CCR, to read:

51.05. Harvest Control Rules.

(a) Harvest control rules adopted pursuant to Section 50.03 that specify either status quo management or the pounds of white seabass that may be taken annually shall be selected by the commission from options provided in the White Seabass Fishery Management Plan (WSFMP) as follows:

Option B2: The MSY proxy is computed as approximately 40 percent of the estimated pristine stock size (40 million pounds) modified by natural mortality (0.1). The MSY proxy is then adjusted downward by multiplying by 0.75 to obtain the OY of 1.2 million pounds.

(b) The commission may use any combination of management measures to meet an annual OY for white seabass.

NOTE

Authority cited: Section 7071, Fish and Game Code.

Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code, Section 5.6, White Seabass Fishery Management Plan .

Section 155.01 is added to Chapter 6, Subdivision 1 of Title 14, CCR, to read:

155.01. White Seabass Commercial Size Limit:

It is unlawful to take, possess, sell, or purchase any white sea bass less than 28 inches in length, measured from the tip of the lower jaw to the end of the longer lobe of the tail.

NOTE

Authority cited: Sections 7071 and 7078, Fish and Game Code.

Reference: Sections 7071, 7075, 7082 and 7083, Fish and Game Code.

Section 155.05 is added to Chapter 6, Subdivision 1 of Title 14, CCR, to read:

155.05. Use of Purse Seine and Roundhaul Nets and Delivery to California Ports.

(a) It is unlawful to use any purse seine or round haul net to take white seabass in waters off California.

(b) It is unlawful to possess any white seabass, except those taken south of the International Boundary Line between the United States and Mexico, and imported into the state pursuant to authority of subsections (c) and (d), on any boat carrying or using any purse seine or round haul net, including, but not limited to, a bait net defined pursuant to subsection 50.01(b), Title 14, CCR.

(c) White seabass taken in waters south of the International Boundary Line between the United States and Mexico, extended westerly in the Pacific Ocean, may be delivered to California ports aboard boats, including boats carrying purse seine or roundhaul nets in accordance with subsection (d) governing the inspection and marking of such fish imported into this State. The cost of such inspection and marking shall be paid by the importer.

(d) No person, firm, or corporation shall deliver, accept, or unload any white seabass from any vessel carrying a purse seine or roundhaul net until the Fish and Game Patrol office nearest the point of delivery shall have issued a written inspection clearance to the master or operator of such vessel, or his agent, permitting said delivery. Such clearances shall be issued upon presentation of evidence satisfactory to the Department of Fish and Game of the fact that such fish was taken south of the International Boundary Line between the United States and Mexico.

(e) Notwithstanding the provisions of this section, the department may issue permits to hook-and-line commercial fishermen to possess a bona fide bait net on their vessels for the purpose of taking bait for their own use only.

NOTE

Authority cited: Sections 7071 and 7083, Fish and Game Code.

Reference: Sections 2362, 7071, 7075, 7082, 7083 and 8623 Fish and Game Code.

Section 155.10 is added to Chapter 6, Subdivision 1 of Title 14, CCR, to read:

155.10. Gill Net Mesh Size, Closed Season, Possession of Thresher and Shortfin Mako.

(a) Gill nets with meshes of a minimum length of six inches may be used to take white seabass. However, during the period from June 16 to March 14, inclusive, not more than 20 percent by number of a load of fish may be white seabass 28 inches or more in total length, up to a maximum of 10 white seabass per load, if taken in gill nets with meshes from 3 ½ to 6 inches in length.

(b) In accordance with Fish and Game Code Section 8576, during the period from February 1 to August 14, inclusive, not more than two thresher sharks and two shortfin mako sharks may be possessed and sold if taken incidentally in drift gill nets while fishing for white seabass and if at least five white seabass are possessed and landed at the same time as the incidentally taken thresher or shortfin mako shark.

NOTE

Authority cited: Sections 7071 and 7083, Fish and Game Code.

Reference: Sections 7071, 7075, 7082, 7083, 8576, and 8623, Fish and Game Code.

Section 109, Title 14, CCR is amended to read:

109. Importation of Yellowtail; and Barracuda; ~~and White Sea Bass~~ from Mexico. No person, firm, or corporation shall deliver, accept, or unload any yellowtail or, barracuda, ~~or white sea bass~~ from any vessel carrying a purse seine or round haul net until the Department of Fish and Game Patrol office nearest the point of delivery shall have issued a written inspection clearance to the master or operator of such vessel, or his agent, permitting said delivery. Such clearances shall be on such forms as the Department of Fish and Game shall prescribe. Such clearances shall be issued upon presentation of evidence satisfactory to the Department of Fish and Game of the fact that such fish was taken south of the International Boundary Line between the United States and Mexico.

NOTE

Authority cited: Sections 2362, Fish and Game Code.

Reference: Sections 2362, Fish and Game Code.



## Attachment 1 to Final Adoption Statement of Reasons

Table 1. Response to Public Comments Received Since December 1, 2001 on  
the White Seabass Fishery Management Plan and Regulations  
(See Pre-adoption Statement of Reasons for Response to Comments Received Prior to January 1, 2002)

**Most public comments are directed at the White Seabass FMP, not the implementing regulations. However, some comments were directed at elements of the plan that are reflected in regulations and responses to these are provided.**

O=Oral Comment

W=Written Comment

E=Electronic

**Table 1 (Through the May 9, 2002 Adoption Hearing)**

<b>Comment Number &amp; Speaker</b>	<b>Summary of Comment</b>	<b>Department Response</b>	<b>Revision Needed?</b>	<b>Section Number</b>
O1. Bob Strickland, United Anglers of Southern CA. 4/4/02 Commission Meeting Testimony.	1. Comment: What data source was used to determine that most of the white seabass take is by the recreational component of the fishery?	Response: Marine Recreational Fisheries Statistical Survey (MRFSS) data are used to estimate the take by recreational fishers and to estimate the pounds of white seabass taken by this component of the fishery.	No	NA

O1( cont.)	2. Comment: Are these recreational data accurate, and do these data actually capture the take by private boaters up and down the whole coast?	Response: The MRFSS follows a sampling protocol that estimates catch and fishing effort. The accuracy of the data depends on the sample size and the extent to which sampling is representative of the fishery. There is always the potential for error which can be calculated in the form of confidence limits on the data. Also, while white seabass are taken primarily off southern California, the survey is conducted statewide.	No	NA
O2. Chris Miller, California Lobster and Trap Fisherman's Association, 4/4/02 Commission meeting	1. Comment: Supports the WSFMP. Resource managers from California should cooperate with Mexico and share data to promote white seabass management because we share the resource. Encouraged the Commission to consider this issue as it moves forward with the implementation of the MLMA.	Response: While states may not negotiate directly with foreign governments, the Department seeks to cooperatively manage resources in common with Mexico through communication with organizations such as MEXUS Pacifico a consortium of interests from both countries. The Commission will be kept apprised of developments within Mexico's white seabass fisheries and management to the extent that the Department can obtain such information.	No	NA

<p>O3. Tom Raftican, President of United Anglers of Southern California (UASC) 4/4/02 Commission Meeting.</p>	<p>1. Comment: Thanked the Department for an impressive compilation of data on the white seabass resource and he felt that the document (WSFMP) highlighted the necessity of using fishery management plans for managing fished stocks. Commended and thanked “Ms. Marija Vojkovich and the new staff of this plan for stepping in late in the plan process and doing an excellent job of putting together a couple of very productive meetings and productive revisions to previous drafts that have vastly improved this plan”. He stated that the vulnerability of this fishery and the problems associated with managing it have not been glossed over in</p>	<p>1. Response: None needed. The plan is intended to comply with MLMA goals and objectives and provide for a sustainable resource and fisheries. Efforts were made throughout the process to engage and gain input from fisheries interests during development, review, and revision of the plan.</p>	<p>No</p>	<p>NA</p>
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O3. (Cont.)	<p>2. Comment: He stated that the plan lacks substantial precautions in managing the white seabass fishery because the management options, although consistent with the National Standard Guidelines for managing fisheries, are based on very optimistic assumptions about the current status of the white seabass stock.</p>	<p>2. Response: The WSFMP uses National Standard Guidelines for the express reason that they take into account uncertainties about the absolute size of the stock. No assumption is made regarding the precise current status of the resource other than the resource has shown continued improvements during the past decade based on improved size composition of white seabass catches, improved indices of abundance for both the recreational and commercial fisheries, as well as positive recruitment indices during this period.</p>	No	NA
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O3. (cont.)	3. Comment: There are important elements in this plan that still need to be completed and these include 1) ongoing fishery monitoring and review of the plan's successes and failures; 2) obtaining research to fill a wide assortment of data gaps; 3) and establishing an allocation policy.	3. Response: 1) The plan and implementing regulations provide for annual reviews of fisheries information, and reports on status of the fisheries to the Commission, including recommendations for changes in management. 2) While additional research is a high priority for white seabass, current regulations and monitoring of fisheries dependent data in combination with recruitment indices are expected to provide for continued rebuilding of local white seabass stocks. 3) During plan development, United Anglers sought to forego allocation decision at this time until the new White Seabass Scientific and Constituent Advisory Committee is established, which the Department agrees is appropriate.	No	NA
O4. Bob Osborn, United Anglers of Southern California 4/4/02 Commission Meeting.	1. Comment. Identified himself to the Commission as one of the members of the White Seabass Advisory Panel and he supported the position expressed by Mr. Raftican.	Response: See responses to Tom Raftican comments above.	No	NA

<p>O5. Robert Hetzler 4/4/02 Commission Meeting. Oral Comments and 1 letter.</p>	<p>1. Comment: Considered the plan to be well-developed and he commended the Department for its work on the plan. Mr. Hetzler questioned the need for setting an optimal yield (OY) for this fishery at this time because he felt that this OY was based on historical stock levels and that it had nothing to do with the current stock size. Mr. Hetzler stated that the current stock size is probably much different than it was in the past and that there may have been changes in habitat, recruitment and spawning biomass. Mr. Hetzler recommended that the harvest level be set at a lower, more precautionary level in order to build up the stock.</p>	<p>Response. The OY options provided the Commission for consideration and adoption are based on two independent estimates of historic biomass combined with reduction in OY using a precautionary safety factor that adjusts the authorized annual catch downward. See response to his comments below as they appear in the final White Seabass Fishery Management Plan (Appendix F).</p>	<p>No</p>	<p>NA</p>
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O6. Ashley Mullen, Tuna Commission, and Bob Osborn, United Anglers of California, 12/18/01 Comments provided at ad hoc White Seabass Advisory Committee Meeting.	Comments 1: Both gentlemen expressed their concern with proposed Section 51.04(a) use of “in pounds” to express allocations. They wished to see more flexibility in the measure used (such as number of fish).	Response 1: The Department agrees with the proposed change and removed “in pounds” from the regulatory language. Regulatory language provided with the Pre-adoption Statement of Reasons reflects this change.	Yes	51.04(a)
O6. Ashley Mullen, Tuna Commission, and Bob Osborn, United Anglers of California, 12/18/01 (cont.)	Comment 2: There was support for adding language to Section 51.04(b) that would require consideration of “at least” those factors listed in the plan and this regulations during consideration of allocation of white seabass annual harvests.	Response 2: The Department agrees with this change and added the words “at least” to the regulatory language. Regulatory language provided with the Pre-adoption Statement of Reasons reflects this change.	Yes	51.04(b)

W1. Robert Hetzler, President of Harbour Ocean Preservation Enhancement Letter dated 3/18/02 and provided at the Commission Meeting of 4/4/02.	<p>Comment 1: The plan states that the fishery is fully recovered and derives an MSY from data collected in the 1970s. Mr. Hetzler did not understand the rationale for using a historical MSY, stating that the historical catch data does not support the plan's proposed MSY. According to Mr. Hetzler, the fishery has been unable to support an MSY of 1.5 million pounds since the 1950s. Mr. Hetzler recommended a more conservative OY such as option C1 which used recent catch data rather than an OY based on a historical MSY.</p>	<p>Response 1: The plan does not state that the fishery is fully recovered, but that it is recovering. The preferred alternative uses National Standard Guidelines (NSGs), which were originally used in the development of federal FMPs, to derive an MSY proxy for the white seabass fishery. The NSGs allow for situations when MSY can not be estimated directly. The lone stock assessment for white seabass used catch and effort data in the 1970s and came up with an MSY similar to the preferred alternative. The similarity of the two MSY estimates suggests that the MSY proxy has some value. Recent catch data were not recommended for determining an MSY since recent catches have not been stable. Harvest levels below 1.5 million pounds since the 1950s may be due to other factors, and not necessarily related to the fishery's inability to presently support this level. During the 1980s to the present, more restrictive regulations have been implemented that have limited the number of white seabass that can be landed. Oceanographic changes favorable for white seabass have also occurred during the last few years and may explain the increased landings since 1997.</p>	No	NA
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W1. Robert Hetzler 3/18/02 Letter (Cont.)	Comment 2: The plan does not answer why stock levels remained very low for nearly 20 years (1980s to 1997) and why it recently increased during the last three years. "What happened to allow the stock to go from depleted to fully recovered in just three years?"	Response 2: This comment was more applicable to an earlier draft of the plan. The present plan provides a possible explanation for this. A pattern seen in the 1890s and 1940s seems to be occurring today whereby white seabass abundance increases substantially following a shift from warmer to colder ocean waters. Warmer waters occurred in the Southern California Bight from the late 1970s to mid 1990s, but have become colder the last few years. Again, the plan does not state that the fishery is fully recovered, but that it is recovering. Although not available at the time of plan preparation, final white seabass landings for 2001 are actually higher than in 2000, indicating that the stock is supporting the current level of fishing mortality.	No	NA
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W1. Robert Hetzler 3/18/02 Letter (Cont.)	<p>Comment 3: The plan is flawed because it lacks a new estimate of mortality and data on year classes, spawning biomass capacity, and recruitment levels. The present stock has a different year class makeup: the stock of the 1950s and 1960s consisted of more mature fish which provided greater recruitment levels and was able to sustain a higher OY. The current white seabass spawning biomass is substantially below that of the 1950s and 1960s and therefore can not sustain as high an MSY .</p>	<p>Response 3: We agree that current estimates of mortality, year class strengths, and spawning biomass are valuable data; and we have emphasized that a current stock assessment for white seabass is needed. Information on recruitment is currently being collected through studies done by OREHP. Mr. Hetzler provides no specific information, and we are unaware of any data showing that the present stock of white seabass consists of smaller fish and a spawning biomass substantially below that of the stock of the 1950s and 1960s. Recent recreational and anecdotal commercial data suggest that the average size of white seabass being caught has increased in recent years and catch rates have increased.</p>	No	NA
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W1. Robert Hetzler 3/18/02 Letter (Cont.)	<p>Comment 4: Mr. Hetzler was concerned about the plan's call for a reassessment of the stock in two years, because adjustments that may be made in the fishery at that time may come too late and cause a set back in the recovery of the stock. He felt that the proposed OY of 1.2 million pounds could severely deplete the stock before it is determined that the yield was set too high.</p>	<p>Response 4: The plan recommends that a current stock assessment be done now. The plan also calls for the Department's White Seabass Management Team to monitor the fishery throughout the year and for the Commission to evaluate the effectiveness of management measures annually. The fishery management plan framework allows the Commission to adjust, impose, or remove management measures at any time during the year for resource conservation, social or economic reasons. This allows for adaptive management of the fishery, enabling quick adjustment of OY if needed.</p>	No	NA
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<p>W2. Ron Gaul, Sea Turtle Restoration Project. Letter dated 5/7/02 provided at the Commission's 5/9/02 meeting.</p>	<p>Comment 1: The letter alleges that the White Seabass FMP inadequately addresses concerns regarding bycatch in the white seabass gillnet fishery.</p>	<p>Response 1: (Also see responses to Comment O2, Response 1 in Table 1 of the Attachment to the Pre-adoption Statement of Reasons). The Department believes the White Seabass FMP adequately address bycatch issues for the white seabass fisheries. The White Seabass FMP includes as its goals and objectives, management that will be responsive to environmental...changes, and will minimize bycatch and waste of white seabass and other species (see Section 1.3 Specific Goals and Objectives of the White Seabass Fishery Management Plan, page 1-4). The plan acknowledges that it would be useful to reassess bycatch in the gill net fishery, but does not specifically commit to an observer program due to uncertainties regarding available resources and priorities associated with white seabass management. The Department has historically taken the lead in placing observers aboard vessels participating in State managed commercial fisheries to identify bycatch and effects on other fisheries where strong evidence suggests a problem exists. However, Federal resource management agencies have taken the lead in recent years for at-sea observer programs due to their management authority over marine mammals, sea turtles, and seabirds which can be taken in these fisheries. At the same time, California is committed to continued assistance in collecting and providing bycatch data (an example</p>	<p>No</p>	<p>NA</p>
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W2. Ron Gaul, Sea Turtle Restoration Project. Letter dated 5/7/02 provided at the Commission's 5/9/02 meeting (cont.)	<p>Comment 2: The commentor takes issue with the Department's responses to comments provided earlier to Sea Turtle Restoration Project comments regarding bycatch in the white seabass gill net fishery and past levels of observer coverage. The Sea Turtle Restoration Project suggests that prior levels of observer coverage are too low, and that the White Seabass FMP is complacent about the "problem of white seabass gillnets".</p>	<p>Response 2: (See response to comment W2, Response 1). The Sea Turtle Restoration Project suggests that the level of former observer coverage is too low and that the bycatch level is too high, without providing the levels or bases of what they believe to be appropriate levels for both (presumably 100 percent and 0 percent respectively). Former observer studies and bycatch levels were conducted and identified at a time when the fishery was less restricted in area and number of participants. From a fisheries perspective at that time, the level of coverage was deemed good and the bycatch levels were not extreme. At the same time, there is an increasing awareness of the need to reduce all real and potential bycatch in fisheries towards achieving the multiple goals of sustainable fisheries, reduced impacts on associated species, and preservation of protected species. These realities are clearly reflected in the goal and objectives of the Marine Life Management Act and the White Seabass FMP itself.</p>	No	NA
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W2. Ron Gaul, Sea Turtle Restoration Project. Letter dated 5/7/02 provided at the Commission's 5/9/02 meeting (cont.)	Comment 3: The Department also falls short in responding to concerns about marine mammal bycatch.	Response 3: (See W2, Response 2 above). These comments appear directed at the Department's observation that the white seabass gill net fishery is not one that is presently required to have federal observers aboard. This is generally the case where the National Marine Fisheries Service believes that the bycatch of marine mammals is not excessive and a threat to protected species.	No	NA
W2. Ron Gaul, Sea Turtle Restoration Project. Letter dated 5/7/02 provided at the Commission's 5/9/02 meeting (cont.)	Comment 4: The comment indicates that a Department response (in Pre-adoption Statement) regarding the unlikely take of sea otters in white seabass nets is not correct.	Response 4: Nearshore waters, typically occupied by sea otters, are closed to the use of gill and trammel nets along the entire California coast. In fact the Department recently closed the last open stretch of coastline between Point Arguello and Point Sal in Santa Barbara County for the express purpose of protecting marine mammals and seabirds. Therefore, the Department sees no error in the comment as alleged by the Sea Turtle Restoration Project.	No	NA
W2. Ron Gaul, Sea Turtle Restoration Project. Letter dated 5/7/02 provided at the Commission's 5/9/02 meeting (cont.)	Comment 5: It is imperative that the DFG and Commission urge NMFS to promulgate a monitoring program that provides observer coverage of this fishery.	Response 5: The White Seabass FMP identifies the necessity of investigating the interactions of nets that are fished farther from shore in recent years than in past years with regard to marine mammals, birds, and turtles (White Seabass FMP, Section 7.4.1, Short Term Research Goals and Needs, page 7-12). The NMFS, if not already aware of this goal, will be made aware as a part of plan implementation.	No	NA

<p>E1. Jan, Joyce, Jessie Zeiters, email received 4/7/02</p>	<p>Comment 1: The person commenting expresses disappointment that the Commission has chosen to allow WSB (white seabass) commercial fishing again, stating the fishery was almost wiped out due to overfishing.</p>	<p>Response 1: Based on the entire content of the email and the origin (location) of the comments, there is a question of whether the comments are directed at the white seabass, or the nearshore fishery, or both (both the White Seabass and Nearshore FMPs were originally scheduled to be considered by the commission at meetings that overlapped). The commercial fishery for white seabass has been conducted continuously since the beginning of the 20<sup>th</sup> century. Therefore, the Commission is not reauthorizing commercial fishing for white seabass as a part of adopting the White Seabass FMP and implementing regulations. The Marine Life Management Act (MLMA) that guides development of fishery management plans directs that “to the extent that measures in a plan that either increase or restrict the overall harvest in a fishery, fishery management plans shall allocate those increases or restrictions fairly among recreational and commercial sectors participating in the fishery” [see F&amp;G Code, Sec. 7072(c)]. Therefore, it would be counter to the policies of the MLMA to simply close one fishery in the absence of compelling information supporting such action. Also, while overfishing in the past by one or both commercial and recreational fishing sectors may have occurred in the past relative to the reproductive capacity of the stock, fishing alone is not likely the single cause of a decline in white</p>	<p>No</p>	<p>NA</p>
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E1. Jan, Joyce, Jessie Zeiters, email received 4/7/02 (cont.)	Comment 2: Stringent time limits should be placed on the white seabass fishery as they are for salmon.	Response 2: Seasonal closures already exist on both commercial and recreational fisheries during the period from March 15 until June 15 of each year to help protect spawning concentrations of white seabass.	No	NA
E1. Jan, Joyce, Jessie Zeiters, email received 4/7/02 (cont.)	Comment 3: Continued use of gill nets .... will be the death of the resource if allowed to continue.	Response 3: The use of gill nets has been curtailed throughout a large area of nearshore waters off California. This protects a segment of the stock from exploitation by this gear throughout the year. However, as presently regulated (through a minimum mesh size that provides for escapement of all subadult white seabass from these nets, minimum size limit, and seasonal closures) the gill net fishery remains viable without threatening overharvest of the resource.	No	NA